

STATE OF MICHIGAN
COURT OF APPEALS

RICKY HICKS, ROXANNE HICKS, and BRIAN
GOODSELL,

UNPUBLISHED
February 25, 2014

Plaintiffs-Appellees,

v

AUTO CLUB GROUP INSURANCE
COMPANY,

No. 312365
Manistee Circuit Court
LC No. 08-013074-CK

Defendant-Appellant.

Before: BOONSTRA, P.J., and CAVANAGH and FITZGERALD, JJ.

PER CURIAM.

Defendant appeals as of right an order denying its motion for case evaluation sanctions against plaintiffs Ricky Hicks and Brian Goodsell. We affirm.

This matter is before us for the third time so we need not repeat in detail the factual background of this matter. In summary, Roxanne and Ricky Hicks' home was destroyed by fire. Although Ricky and Roxanne were married, Roxanne and Goodsell had purchased the real property on which the home was situated by land contract. Roxanne and Ricky had insurance coverage through defendant. After the fire they submitted an insurance claim which was eventually denied. Plaintiffs filed their complaint alleging that defendant's denial of Roxanne and Ricky's insurance claim constituted a breach of contract. Goodsell was named as a plaintiff because of his ownership interest in the real property, but he was not insured under the insurance policy.

Following a bench trial, the trial court entered a judgment of no cause of action in favor of defendant with regard to Goodsell and Ricky, but found in favor of Roxanne with regard to her insurance claim. The trial court concluded that Goodsell had no claim against defendant. The court also concluded that Ricky fraudulently overstated the nature and value of the contents of the home, but Roxanne did not participate in the fraud and was entitled to judgment as an innocent coinsured. That decision was affirmed by this Court. *Hicks v Auto Club Group Ins Co (On Remand)*, unpublished opinion per curiam of the Court of Appeals, issued January 24, 2012 (Docket No. 295391). Thereafter, Roxanne filed a motion for case evaluation sanctions against defendant which was granted and is not contested here.

Defendant also moved for case evaluation sanctions against Ricky and Goodsell pursuant to MCR 2.403(O) arguing that, because it prevailed against their specific claims, defendant was entitled to case evaluation sanctions against them. The case evaluation had been conducted on November 18, 2008, and had resulted in an award of “\$15,000 for plaintiffs.” All of the parties rejected the case evaluation award. Defendant argued that it was the prevailing party against Ricky and Goodsell because, in a case involving multiple parties, MCR 2.403(O)(4)(a) requires the trial court to examine the case evaluation award and ultimate verdict as to the defendant and each plaintiff separately.

Plaintiffs responded to defendant’s motion, arguing that MCR 2.403(H)(3) required that, if one claim is derivative of another, they must be treated as a single claim; thus, Ricky and Roxanne’s claims must be treated as one claim and the verdict was more favorable than the case evaluation award. See MCR 2.403(O)(4)(b). Further, Goodsell was named as a party only because his name appeared on the underlying land contract; thus, he made no claim against defendant. Therefore, plaintiffs argued, defendant was not entitled to case evaluation sanctions against any of the plaintiffs.

The trial court denied defendant’s motion for case evaluation sanctions, holding that it could not impose sanctions on Goodsell because he was not requesting any relief in this matter. Further, the trial court held that it could not impose sanctions against Ricky because his claim was derivative of his wife’s claim and, thus, must be treated as a single claim under MCR 2.403(H)(3). This appeal followed.

Defendant argues that the trial court erred in denying its motion for case evaluation sanctions against Ricky and Goodsell because defendant received a verdict of no cause of action against them which was more favorable to defendant than the case evaluation award. We disagree.

We review de novo a trial court’s decision whether to grant case evaluation sanctions under MCR 2.403(O). *Van Elslander v Thomas Sebold & Assoc, Inc*, 297 Mich App 204, 211; 823 NW2d 843 (2012). The interpretation of a court rule is also reviewed de novo on appeal. *ISB Sales Co v Dave’s Cakes*, 258 Mich App 520, 526; 672 NW2d 181 (2003). The rules applicable to statutory construction apply to the interpretation of court rules. *Henry v Dow Chemical Co*, 484 Mich 483, 495; 772 NW2d 301 (2009). Therefore, if the plain and ordinary meaning of the language is clear, judicial construction is not permitted. *Yudashkin v Holden*, 247 Mich App 642, 649; 637 NW2d 257 (2001).

Defendant argues that it was entitled to an award of case evaluation sanctions against Goodsell and Ricky because they “proffered the same theory of liability against [defendant] – entitlement to recovery of insurance benefits following a fire loss.” With regard to Goodsell, defendant argues that it did not learn that Goodsell was not bringing any claims against it until mid-way through the trial “at which point [defendant] had incurred significant expense defending against what it believed were Brian Goodsell’s claims against it.” However, defendant fails to explain what claims defendant believed it was defending with regard to Goodsell. Plaintiffs’ complaint asserted a breach of contract claim arising after defendant denied Roxanne and Ricky’s insurance claim. Goodsell was not a party to the insurance contract, and he was not a named insured under the contract. Accordingly, we agree with the trial court’s conclusion that

Goodsell did not have a claim against defendant for which he was seeking relief. Because Goodsell never asserted any claim against defendant, the case evaluation award could not have included consideration of Goodsell and defendant did not incur attorney fees and costs defending against any theory of liability raised by Goodsell at trial. See *Ayre v Outlaw Decoys, Inc*, 256 Mich App 517, 524; 664 NW2d 263 (2003). Therefore, we affirm the trial court's denial of case evaluation sanctions against Goodsell.

Defendant also argues that it was entitled to case evaluation sanctions against Ricky because the verdict of no cause of action was more favorable to defendant than the case evaluation award. The trial court denied defendant's request on the ground that Ricky's claim was derivative of his wife Roxanne's claim under MCR 2.403(H)(3) and, thus, must be treated as a single claim. On appeal, defendant does not challenge the trial court's conclusion, but merely argues that, even if that "proposition is true, it is irrelevant." Citing to *Brown v Frankenmuth Mut Ins Co*, 187 Mich App 375; 468 NW2d 243 (1991), defendant argues that it was still entitled to case evaluation sanctions. However, in that case both the husband and wife had insurable interests in the property that was destroyed by fire. *Id.* at 381-382. That is, neither spouse's claim was a derivative claim. In this case, as we previously held, only Roxanne had an insurable interest in the real property at issue because she purchased the property with Goodsell on a land contract; Ricky was not a party to the land contract.¹ *Hicks (On Remand)*, unpublished opinion per curiam of the Court of Appeals, issued January 24, 2012 (Docket No. 295391), slip op 2. And we previously rejected defendant's argument that Ricky and Roxanne should be deemed tenants by the entireties with regard to the real property. *Id.* Accordingly, Ricky's claim against defendant was a derivative claim.

MCR 2.403(H)(3) provided: "If one claim is derivative of another . . . they must be treated as a single claim, with one fee to be paid and a single award made by the case evaluators." Therefore, the case evaluators issued a single award of "\$15,000 for Plaintiffs." Again, Goodsell had no claim against defendant to evaluate. The verdict that Roxanne received far exceeded the case evaluation award. Consequently, defendant did not receive a verdict more favorable than the case evaluation award and, thus, was not entitled to the sanctions provided under MCR 2.403(O). Therefore, we affirm the trial court's denial of case evaluation sanctions against Ricky. Accordingly, the trial court's order denying defendant's motion for case evaluation sanctions against Ricky and Goodsell is affirmed.

Affirmed.

/s/ Mark J. Cavanagh
/s/ E. Thomas Fitzgerald

¹ Defendant's insurance contract provided that it would not pay more than "the insurable interest an insured person has in the covered property at the time of loss."